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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,

Opposer,

v.

ROBERT B. WILCOX,

Applicant.

7655 3029

Opp. No. 91161969



08-19-2005

U.S. Patent & TMO/TM Mail Rcpt Dt. #01

OPPOSER'S MOTION TO COMPEL

Pursuant to Rule 2.120(c) of the Trademark Rules of Practice and Fed. R. Civ. P. 37(a), Opposer The Ritz-Carlton Hotel Company, L.L.C. ("Opposer") moves to compel Applicant Robert B. Wilcox ("Applicant") to provide answers to Opposer's First Set of Interrogatories that are signed by Applicant and verified under oath. Opposer also moves to compel Applicant to provide complete and non-evasive answers to Opposer's First Set of Interrogatories. Opposer has made a good faith effort to resolve this dispute. However, Applicant has not responded to letters addressing this matter. As a result, the Board's assistance is required.

Opposer also moves that the Board issue an order resetting the testimony periods in this case upon determination of this motion.

BACKGROUND

This proceeding arises from Opposer's opposition to federal registration of Applicant's alleged mark RITZ (Serial No. 76/553029). On October 18, 2004, Opposer served its First Set of Interrogatories on Applicant. *See* Exhibit 1. Opposer's discovery requests encompassed a number of interrogatories under which Applicant should have provided information relating to the highly relevant issues of the selection, adoption, intended use, and use of Applicant's alleged

mark.

On November 17, 2004, Applicant's counsel served Applicant's Answers To Opposer's First Set Of Interrogatories And First Request For Production, which was one document that was signed by Applicant's counsel. *See* Exhibit 2. Many of the interrogatory answers and responses to requests for production, however, were inadequate, incomplete, ambiguous, and evasive. Moreover, Applicant did not sign the interrogatory answers and verify them under oath as required by the Federal Rules of Civil Procedure and the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"). Instead, the interrogatory answers were signed by Applicant's counsel, and they were not verified under oath.

In a letter to Applicant's counsel dated February 22, 2005, Opposer made the first of numerous good faith efforts to resolve the deficiencies in Applicant's discovery responses and to get Applicant to provide interrogatory answers signed by Applicant and verified under oath. *See* Exhibit 3. In a letter to Opposer dated March 2, 2005, Applicant's counsel contended that Applicant himself was not required to sign the interrogatory answers, and that counsel's signature was "the only signature required by the rules." *See* Exhibit 4. Applicant's counsel did not address the fact that the answers were not verified under oath. In the same letter, Applicant's counsel attempted to address the deficiencies in his client's discovery responses. *Id.* However, these attempts fell far short. Further, Applicant made no attempt to serve sworn supplemental answers.

On March 4, 2005, Opposer sent a letter to counsel for Applicant again requesting that Applicant sign the interrogatory answers and verify them under oath. *See* Exhibit 5. Opposer also addressed the continuing deficiencies in Applicant's discovery responses and requested that Applicant supplement those responses accordingly. *Id.*

After no response was forthcoming, opposer sent a follow up letter to Applicant's counsel on March 10, 2005. *See* Exhibit 6. In response, Applicant's counsel refused to address his client's discovery deficiencies until Opposer addressed alleged deficiencies in its own discovery answers. *See* Exhibit 7. On March 17, 2005, Opposer sent a reply to Applicant's counsel advising that Applicant's position was improper and that Opposer was, in fact, making a good faith effort to address the perceived deficiencies. *See* Exhibit 8. Additionally, Opposer again requested that Applicant provide a response to Opposer's March 4, 2005 letter and provide signed, verified, and supplemental interrogatory answers. *Id.*

In a letter dated March 24, 2005, Applicant's counsel made a further effort to address the deficiencies in his client's discovery responses. *See* Exhibit 9. Included in the letter were "good-faith responses" to certain of Opposer's interrogatories. *Id.* However, Applicant again failed to serve any sworn supplemental interrogatory answers signed by Applicant. Applicant still did not provide answers to Opposer's First Set of Interrogatories that were signed by Applicant and verified under oath, nor did Applicant's counsel address this topic or his client's obligations under the relevant discovery rules. Later, during his discovery deposition on May 13, 2005, Applicant admitted he had not even seen his attorney's March 24, 2005 letter containing the "good faith responses." *See* Exhibit 10 at 62:20 – 63:4.

Opposer made several additional good faith efforts to get Applicant to comply with his outstanding discovery obligations, to no avail. In a letter dated April 6, 2005, Opposer once again requested that Applicant provide complete, sworn interrogatory answers signed by Applicant and verified under oath. *See* Exhibit 11. No response from counsel was forthcoming. In a letter dated May 20, 2005, after Applicant admitted at his deposition that he had not seen his attorney's March 24, 2005 letter, Opposer sent another letter requesting complete interrogatory

answers signed under oath by Applicant. *See* Exhibit 12. Again, no response from counsel was forthcoming. Finally, in a letter dated August 9, 2005, with the opening of Opposer's testimony period approaching, Opposer made an additional good faith attempt to persuade Applicant to comply with his outstanding discovery obligations voluntarily. *See* Exhibit 13. Again, Applicant's counsel ignored the letter, and no response has been received.

Applicant's unjustified refusal to fulfill its discovery obligations under the Federal Rules of Civil Procedure and the TBMP prejudices Opposer by preventing Opposer from thoroughly preparing its case.

ARGUMENT

A. Applicant Should Be Compelled To Provide Answers To Opposer's Interrogatories Signed By Applicant And Verified Under Oath

Rule 33 of the Federal Rules of Civil Procedure provides, in relevant part, that:

"[A]ny party may serve upon any other party written interrogatories ... to be answered by the party served or, if the party served is a public or private corporation or a partnership or association or government agency, by any officer or agent, who shall furnish such information as is available to the party."

Fed. R. Civ. P. 33(a). Rule 33 also requires that "[e]ach interrogatory shall be answered separately and fully in writing under oath, unless it is objected to." Fed. R. Civ. P. 33(b)(1).

Moreover, "[t]he answers are to be signed by the person making them, and the objections signed by the attorney making them." Fed. R. Civ. P. 33(b)(2).

The TBMP in essence mirrors the requirements of the Federal Rules with respect to interrogatory answers. Specifically, TBMP Section 405.04(c) requires that:

Interrogatories must be answered by the party served. If the party served is a corporation, association, or government agency, the interrogatories must be answered by an officer or agent, who must furnish whatever information is available to the party served.

Additionally, TBMP Section 405.04(b) requires that "[i]f an interrogatory is answered, the

answer must be made separately and fully, in writing under oath.”

In this case, Applicant’s attorney signed the answers to Opposer’s First Set of Interrogatories. *See* Exhibit 2. Applicant’s attorney is not a party to the proceeding. Applicant is not a “public or private corporation or a partnership or association or government agency” under the Fed. R. Civ. P. 33(a), or a “corporation, association, or government agency” under TBMP Section 405.04(c), under which an officer or agent may sign. Applicant is an individual, and as such, Applicant is the proper party to sign the interrogatory answers.

Moreover, even assuming that Applicant’s attorney properly signed the interrogatory answers, the answers were not verified under oath as required by Fed. R. Civ. P. 33(b)(1) and TBMP Section 405.04(b).

Because Applicant has failed to comply with both the Federal Rules and the TBMP with respect to his interrogatory answers – despite no fewer than seven good faith attempts by Opposer requesting that he do so – the Board should compel Applicant to provide answers to Opposer’s interrogatories signed by Applicant and verified under oath.

B. Applicant Should Be Compelled To Answer Opposer’s Interrogatories Fully.

Applicant has provided incomplete, evasive, and ambiguous answers to several of Opposer’s properly propounded and relevant interrogatories. Although Applicant’s counsel sent two letters to Opposer in which counsel purported to provide additional answers and factual information, Applicant has not served any supplemental interrogatory answers, much less supplemental answers signed by Applicant under oath. Opposer is entitled to receive complete interrogatory answers signed under oath by Applicant – the party to the proceeding – not unsworn “answers” from his attorney in letters. This is particularly true in view of Applicant’s admission at his deposition that he had not seen at least one of his attorney’s letters. *See* Exhibit

10 at 62:20 – 63:4.

As discussed more fully below, more complete answers are required and should be compelled.

Interrogatory No. 3: Identify and describe the facts relating to the acquisition, selection, availability, adoption, creation, design, decision to use, intent to use, attempt to register, and/or registration of Applicant's Mark, including without limitation, the reasons for and date of the selection and the identity of all persons who participated in the selection.

Applicant's Answer: Applicant, and his spouse participated in the selection of the mark and there is no specific reason for said selection.

The answer to this interrogatory is incomplete. It omits information requested, such as facts relating to the availability, intent to use, decision to use, attempt to register, and date of selection of Applicant's alleged mark. Applicant should be compelled to supplement its answer to provide all the requested information.

Interrogatory No. 7: Identify all persons who designed, created, printed, or made each item on which Applicant's Mark has ever been displayed, including without limitation all items that Applicant was required to identify in response to the preceding interrogatory, and for each such person identify which items were designed, created, or made by him or her.

Applicant's Answer: Applicant and his spouse worked jointly on the design.

The answer to this interrogatory is incomplete. Although it specifies that Applicant and his spouse worked jointly on the design, it omits information requested, such as the identity of all persons who created, printed, or made each item on which Applicant's alleged mark has ever been displayed. Applicant should be compelled to supplement its answer to provide all the requested information.

Interrogatory No. 12: Identify all advertising and promotional methods, or types of media, used or intended to be used in advertising or promoting the sale of any products or services under Applicant's Mark, specifying each publication, radio station, television station, Internet website, or other advertising medium used in connection with such advertising or promotion, and the date(s) on which such advertising or promotional activity occurred.

Applicant's Answer: Applicant has not used the mark in connection with the sale of any products or services.

The answer to this interrogatory is incomplete. It omits information concerning the advertising and promotional methods, or types of media, *intended to be used* by Applicant. Applicant should be compelled to supplement its answer to provide all the requested information.

Interrogatory No. 14: Identify the types of prospective purchasers or customers who have used or purchased, or who may use or purchase, the products and services in connection with which Applicant's Mark is used.

Applicant's Answer: Applicant has not used the Mark in connection with any product or service to date.

The answer to this interrogatory is incomplete. Again, it omits information concerning the types of prospective purchasers or customers *who may use or purchase* the products or services specified. Applicant should be compelled to supplement its answer to provide all the requested information.

Interrogatory No. 28: Identify and describe all objections received by Applicant, from Opposer or any third party, relating to the use, attempted registration, or registration of Applicant's Mark, specifying the identity of each person from whom any such objection was received, the date of the objection, and all action taken in response to the objection.

Applicant's Answer: No such third party objections exist. Opposer has full knowledge of Opposer's objections to Applicant's federal application to register the mark that is the subject of this Opposition proceeding.

The answer to this interrogatory is incomplete. Merely because Opposer may have knowledge of its objections does not excuse Applicant's obligation to answer this interrogatory. Further, the answer fails to state what action was taken in response to the objection. Applicant should be compelled to supplement its answer to provide all the requested information.

CONCLUSION

For all the foregoing reasons, Opposer respectfully requests the Board to compel Applicant to provide answers to Opposer's First Set of Interrogatories signed by Applicant and verified under oath, and to compel Applicant to provide complete and non-evasive answers to Opposer's First Set of Interrogatories. Opposer also respectfully requests that the Board issue an order resetting the testimony periods in this case upon determination of this motion.

CERTIFICATE OF CONFERENCE

As evidenced by the correspondence attached to this motion, Opposer's counsel has in good faith conferred with Applicant's counsel in an effort to resolve the issues herein but has been unable to reach a resolution.

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By:



Michael A. Grow
Douglas R. Bush
Jason J. Mazur
Arent Fox PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 857-6000

Attorney for Opposer

CERTIFICATE OF MAILING

It is hereby certified that the attached **Opposer's Motion to Compel** (re Opposition No. 91161969) is being deposited with the U.S. Postal Service addressed to the Commissioner of Trademarks, P.O. Box 1451, Alexandria, VA 22313-1451, this 17 day of August, 2005, marked first class mail, postage prepaid.



CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing **Opposer's Motion To Compel** has been served upon Applicant's counsel, Richard D. Clarke, Esq., Law Office of Richard D. Clarke, 3755 Avocado Blvd., #100, La Mesa, California 91941-7301, by first class mail, postage prepaid, this 17 day of August, 2005.



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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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THE RITZ-CARLTON HOTEL COMPANY, L.L.C.,

Opposer,

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ROBERT B. WILCOX,

Applicant

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Opp. No. 91161969

OPPOSER'S FIRST SET OF INTERROGATORIES

Opposer The Ritz-Carlton Hotel Company, L.L.C. ("Opposer") propounds the following interrogatories to be answered by Applicant Robert B. Wilcox ("Applicant") in writing under oath within thirty (30) days pursuant to Rule 33 of the Federal Rule of Civil Procedure.

DEFINITIONS

A. These interrogatories seek answers as of the date hereof and, as to those interrogatories addressed to matters falling within Rules 26(e)(1) and (2) of the Federal Rules of Civil Procedure, shall be deemed to be continuing, requiring Applicant to serve upon Opposer such further answers promptly after Applicant has acquired additional knowledge or information relating in any way to those interrogatories.

B. As used herein, the term "document" is used in its customary broad sense to include, without limitation, the following items, whether printed, or recorded, or filmed, or reproduced by any process, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether original, master or copy; whether printed or stored electronically, namely: agreements; communications, including intra-company communications and correspondence; electronic mail, faxes, cablegrams, radio-grams and

telegrams; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations or interviews; books, manuals, publications and diaries; laboratory and engineering reports and notebooks; charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including story board and/or scripts for television commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, and marginal comments appearing on, any document; other reports and records; and any other information containing paper, writing or physical thing.

C. As used herein, “identify” or to “state the identity” of means:

(1) In the case of a person, to state:

- a. name;
- b. last known residence;
- c. employer or business affiliation;
- d. occupation and business position held;

(2) In the case of a company, to state:

- a. the name;
- b. if incorporated, the place of incorporation;
- c. the principal place of business;
- d. the identity of the person or persons having knowledge of the matter with respect to which the company is named;

(3) In the case of a document, to state:

- a. the identity of the person or persons who prepared it, the sender and recipient, if any;
- b. the title or a description of the general nature of its subject matter;
- c. the date of preparation;
- d. the date and manner of distribution and publication, if any;
- e. the location of each copy and the identity of the present custodian;
- f. the identity of the person or persons who can identify it;
- g. the contents of the document verbatim;
- h. if privilege is claimed, the specific basis for the claim;

In lieu of the foregoing, a copy may be supplied.

(4) In the case of an act or event, to state:

- a. a description of the act or event;
- b. when it occurred;
- c. where it occurred;
- d. the identity of the person or persons performing said act (or, in the case of an omission, the identity of the person or persons failing to act) or involved in said event;
- e. the identity of all persons who have knowledge, information or belief about the act;
- f. when the act, event or omission first became known;
- g. the circumstances and manner in which such knowledge was first obtained.

D. As used herein, “referring or relating to” means comprising, relating to, referring to or in any way relevant within the meaning of Rule 26(b)(1) of the Federal Rules of Civil Procedure.

E. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

F. As used herein, the pronouns “you” and “your” shall mean the Applicant, in the above-captioned proceeding, and all of its parents, predecessors, subsidiaries, affiliates, divisions, groups, licensees, or related companies, as well as their directors, officers, employees, shareholders, agents, representatives, and consultants.

G. As used herein, the terms “person” or “persons” includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations and other legal entities, divisions, departments, or other units thereof.

H. As used herein, the term “Applicant” refers to the Applicant Robert B. Wilcox, and any parents, predecessors, subsidiaries, affiliates, divisions, groups, licensees or related companies, as well as their directors, officers, employees, shareholders, agents, representatives, and consultants. When an answer is supplied with respect to any parents, predecessors, subsidiaries, affiliates, divisions, groups, licensees, or related companies, this fact should be stated, and such parents, predecessors, subsidiaries, affiliates, divisions, groups, licensees, or related companies should be fully identified by name and principal place of business.

I. As used herein, the term “Opposer” refers to the Opposer The Ritz-Carlton Hotel Company, LLC, as well as its officers, directors, employees, agents, attorneys, and representatives, and any successor, predecessor, or related company.

J. As used herein, the term “Applicant’s Mark” refers to Applicant’s alleged mark RITZ, or any word or phrase used alone or in combination with any other word(s), design(s), or symbol(s) by Applicant or any parents, predecessors, subsidiaries, affiliates, divisions, groups, licensees, or related companies, as a trade name, fictitious name, service mark, trademark, or otherwise.

K. As used herein, the term “Opposer’s Marks” refers to Opposer’s family of trade names, trademarks, and service marks containing the word RITZ, which were listed in Paragraph 1 of the Notice of Opposition, in any and all formats, used alone or in combination with any other word(s), design(s), or symbols(s).

INSTRUCTIONS

The following instructions apply in answering these discovery requests:

A. These requests are continuing in nature and, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Applicant has a duty to supplement his answers promptly upon obtaining or learning of further material information.

B. The answer to each discovery request shall include such knowledge or information as is within Applicant’s possession, custody, or control including, but not limited to, knowledge, information, and documents in the possession, custody, or control of Applicant’s officers, directors, accountants, consultants, attorneys, or other agents or representatives.

C. The answers to these discovery requests must be furnished separately and fully in writing under oath or verification by an officer of Applicant declaring, under penalty of perjury, that the answers are true and accurate to the best of his or her current knowledge, information, and belief. If an answer depends upon the knowledge of a person other than the person signing the answers, each such person should be identified in the answer.

D. Your answers shall include the knowledge of your representatives and agents, including, but not limited to, your consultants, accountants, and attorneys.

E. If you object to all or any part of a discovery request, state the grounds of the objection with sufficient specificity to permit determination of the basis for and propriety of such objection, including citations where legal authority is relied upon, and answer the extent the interrogatory is not objectionable. All objections shall be signed by the attorney making them.

F. All answers and objections to discovery requests shall be forwarded, within 30 days of the service thereof, to the offices of Opposer's counsel Arent Fox PLLC, 1050 Connecticut Avenue N.W., Washington, D.C. 20036

G. You shall not refer to documents generally in lieu of answering; if the burden upon you of deriving an answer from documents is the same as it is upon Opposer, you may elect to refer to documents which are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by you and your counsel that, after reasonable investigation, those conditions have been met.

H. The full text of the interrogatory or discovery request (or part thereof) to which any answer is intended to respond is to be restated immediately preceding such answer.

I. If you obtain knowledge that the answer given in response to any interrogatory was not correct when given, a statement in writing consisting of the correct answer to such interrogatory shall be promptly provided.

J. Any document withheld in responding to these interrogatories on the ground of privilege is to be identified by author or authors, recipient or recipients, person or persons to whom copies were furnished, together with the job titles of each such person or persons, date, subject matter and nature of privilege claimed.

K. If you contend that any item of information requested by these interrogatories or discovery requests is privileged, in whole or in part, as a ground for its non-production or non-disclosure, for each alleged privileged item or document, provide all information required by Rule 26 of the Federal Rules of Civil Procedure.

INTERROGATORIES

1. Identify all persons who have knowledge concerning the facts and issues in this proceeding, including without limitation facts relating to the adoption and first use or intended use of Applicant's Mark, the printing, design and manufacturing of any printed materials or other items bearing Applicant's Mark, the marketing and sale of any products or services offered or intended to be offered under Applicant's Mark, and the advertising and promotion of any such products or services.

2. Identify and describe the approximate date(s) and manner in which Applicant first learned of the use or registration of Opposer's Marks, alone or in combination with any other words or design, specifying the identity of the person(s) associated with Applicant who first obtained such knowledge.

3. Identify and describe the facts relating to the acquisition, selection, availability, adoption, creation, design, decision to use, intent to use, attempt to register, and/or registration of Applicant's Mark, including without limitation, the reasons for and date of the selection and the identity of all persons who participated in the selection.

4. Identify and describe the facts relating to the date and manner in which Applicant first used Applicant's Mark in connection with the sale of any products or services, specifying the identity of each person to whom each type of product or service was first sold.

5. Identify and describe each type of product or service sold or offered, or intended to be sold or offered, for sale under Applicant's Mark.

6. Identify and describe all materials on which Applicant's Mark has ever been used or displayed, including without limitation any signs, advertisements, brochures, direct mail solicitations, stationery, business cards, postcards, billboards, handbills, Internet websites, computer screens, directory listings, sales literature, catalogs, clothing, accessories, forms, packages, labels, promotional items, financial reports, price lists, decals, badges, annual reports, and all other materials bearing Applicant's Mark that have been distributed to or seen by prospective customers.

7. Identify all persons who designed, created, printed, or made each item on which Applicant's Mark has ever been displayed, including without limitation all items that Applicant was required to identify in response to the preceding interrogatory, and for each such person identify which items were designed, created, or made by him or her.

8. Identify each current or former employee of Applicant who was ever employed by, affiliated with, or had any dealings with Opposer.

9. Identify all facts relating to any search or evaluation of any records conducted by or for Applicant to determine whether other persons had used or registered any name or mark similar to Applicant's Mark, or whether the use of Applicant's Mark would conflict with the rights of any person, including the date of each search, all records examined, and all persons involved in each search.

10. Identify on an annual basis for each year since Applicant's Mark was first used, the total amount of revenue received that relates to the sale or offering of any product or service sold under Applicant's Mark.

11. Identify on an annual basis for each year since Applicant's Mark was first used the dollar amount of advertising and promotional expenditures for each product or service offered under Applicant's Mark.

12. Identify all advertising and promotional methods, or types of media, used or intended to be used in advertising or promoting the sale of any products or services under Applicant's Mark, specifying each publication, radio station, television station, Internet website, or other advertising medium used in connection with such advertising or promotion, and the date(s) on which such advertising or promotional activity occurred.

13. Identify each advertising agency, public relations firm, or person that has ever performed any services relating to the advertising or publicizing of Applicant's Mark and all persons at each such firm or agency who have had any responsibility for Applicant's account.

14. Identify the types of prospective purchasers or customers who have used or purchased, or who may use or purchase, the products and services in connection with which Applicant's Mark is used.

15. Identify and describe all communications, meetings, or conversations between Applicant and Opposer relating to Applicant's Mark, and the substance of each communication, meeting, or conversation.

16. Identify all documents referring or relating to any objection received by Applicant from any third party concerning the use or registration of Applicant's Mark.

17. Describe with particularity the facts relating to each instance in which a person has been (or has appeared to be) confused, mistaken, or deceived as to the identity of the parties to this action or as to the origin, source, sponsorship, or affiliation of their respective product(s) or service(s), including without limitation the identity of each person who was confused or

mistaken, the date and place of the incident, a description of the circumstances that led to the person's being confused, mistaken, or deceived, how Applicant became aware of the confusion, the product(s) or service(s) involved, all action taken with respect to the confusion, and the identity of the each person who handled such response.

18. Identify all misdirected phone calls, correspondence, e-mails, or other communications received by Applicant that were intended for Opposer.

19. Identify all Internet websites, trade associations, wholesale or retail outlets, direct mail operations, or other trade channels through which any goods or services have been sold or are intended to be sold under Applicant's Mark.

20. Identify and describe all oral or written agreements, including all assignments and licenses entered into by Applicant, referring or relating to Applicant's Mark, specifying the date of each agreement, the identity of all the parties thereto, and the reason and purpose of the agreement.

21. If Applicant claims to have acquired any rights in Applicant's Mark through any predecessor in interest, identify and describe the facts pertaining to said acquisition, including each such predecessor and the date on which each purported use of Applicant's Mark began and ended.

22. If Applicant or any predecessor or related company has ever applied to register Applicant's Mark in the Patent and Trademark Office or with any state, identify and describe the facts pertaining to each such application, including without limitation the status of the application, whether or not any registration was issued, and any reasons for which registration was denied.

23. Identify and describe any survey, poll, or other research conducted by or on behalf of Applicant referring or relating to Applicant's Mark, or the goods or services offered or intended to be offered under Applicant's Mark, including the identity of all persons who conducted or have knowledge of such research.

24. Identify all expert witnesses expected to be called to testify on Applicant's behalf in this proceeding, including the subject area on which each expert will testify, the substance of any facts and opinions to which each expert is expected to testify, a summary of the grounds for each opinion, and the facts showing the qualification of each expert.

25. Identify and describe the facts relating to any negotiations, transactions, or sales entered into between Applicant and any entities in the hotel or restaurant field relating to the services listed in Applicant's application Serial No. 76/553029.

26. Identify each address or geographical location at which Applicant has ever offered any goods or services under Applicant's Mark.

27. Identify and describe the facts relating to any business license Applicant ever obtained in connection with any business that has ever been operated under Applicant's Mark.

28. Identify and describe all objections received by Applicant, from Opposer or any third party, relating to the use, attempted registration, or registration of Applicant's Mark, specifying the identity of each person from whom any such objection was received, the date of the objection, and all action taken in response to the objection.

29. Identify each person who provided information or otherwise assisted in the preparation of answers to the foregoing interrogatories, specifying the information which he or she provided.

If the response to any interrogatory is believed by Applicant to contain confidential information or trade secrets, it should be so designated and access thereto will be confined to Opposer's counsel unless further dissemination thereof is authorized by mutual agreement of the parties or by order of the Board.

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By 

Michael A. Grow
Douglas R. Bush
Jason J. Mazur
Arent Fox PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036
(202) 857-6000

Attorneys for Opposer

CERTIFICATE OF SERVICE

It is hereby certified that the attached Opposer's First Set of Interrogatories (re Opposition No. 91161969) has been served on Applicant's Counsel Richard D. Clarke, Law Office of Richard D. Clarke, 3755 Avocado Blvd., #1000, La Mesa, CA 91941-7301, this 18 day of October, 2004, by first class mail, postage prepaid.



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Applicant, Robert B. Wilcox, an individual, whose business address is 7825 Fay Avenue, Suite 200, La Jolla, California, 92037, (hereinafter referred to as "Applicant"), hereby answers **Opposer's First Set of Interrogatories, and Opposer's First Request for Production of Documents** propounded by Opposer, The Ritz-Carlton Hotel Company LLC, in Opposition No. 91161969, as follows:

I. INTERROGATORIES

INTERROGATORY NO. 1

Identify all persons who have knowledge concerning the facts and issues in this proceeding, including without limitation facts relating to the adoption and first use or intended use of Applicant's Mark, the printing, design and manufacturing of any printed materials or other items bearing Applicant's Mark, the marketing and sale of any products or services offered or intended to be offered under Applicant's Mark, and the advertising and promotion of any such products or services.

ANSWER TO INTERROGATORY NO. 1:

Robert B. Wilcox, Applicant, address above.
Elena Jurate Wilcox, Applicant's spouse, address above.
Richard D. Clarke, Attorney of Record for Applicant, address below.

INTERROGATORY NO. 2

Identify and describe the approximate date(s) and manner in which Applicant first learned of the use or registration of Opposer's Marks, alone or in combination with any other words or design, specifying the identity of the persons(s) associated with Applicant who first obtained such knowledge.

ANSWER TO INTERROGATORY NO. 2:

Applicant cannot specifically recall when or how he first learned of the use of Opposer's marks; Applicant learned of Opposer's registrations in early October 2003 from his trademark attorney, Richard D. Clarke, following a full US trademark search and report.

INTERROGATORY NO. 3

Identify and describe the facts relating to the acquisition, selection, availability, adoption, creation, design, decision to use, intent to use, attempt to register, and/or registration of Applicant's Mark, including without limitation, the reasons for and date of the selection and the identity of all persons who participated in the selection.

ANSWER TO INTERROGATORY NO. 3:

Applicant, and his spouse participated in the selection of the mark and there is no specific reason for said selection.

1
2
3 **INTERROGATORY NO. 4**

4 Identify and describe the facts relating to the date and manner in which Applicant first used
5 Applicant's Mark in connection with the sale of any products or services, specifying the identity
6 of each person to whom each type of product or service was first sold.

7 **ANSWER TO INTERROGATORY NO. 4:**

8 Applicant has not used the mark in connection with the sale of any products or services.
9

10 **INTERROGATORY NO. 5**

11 Identify and describe each type of product or service sold or offered, or intended to be
12 sold or offered, for sale under Applicant's Mark.

13 **ANSWER TO INTERROGATORY NO. 5:**

14 Applicant has not used the mark in connection with the sale of any products or services.
15 Applicant intends to use the mark in connection with fine art gallery services.
16

17 **INTERROGATORY NO. 6**

18 Identify and describe all materials on which Applicant's Mark has ever been used or
19 displayed, including without limitation any signs, advertisements, brochures, direct mail
20 solicitations, stationery, business cards, postcards, billboards, handbills, Internet websites,
21 computer screens, directory listings, sales literature, catalogs, clothing, accessories, forms,
22 packages, labels, promotional items, financial reports, price lists, decals, badges, annual reports,
23 and all other materials bearing Applicant's Mark that have been distributed to or seen by
24 prospective customers.

25 **ANSWER TO INTERROGATORY NO. 6:**

26 Applicant has not used the mark in connection with any product or service to date.
27 Applicant has produced a business card and letterhead design containing a composite
28 RITZSPECTRUM mark, but it has never been distributed or seen by any prospective customers.

29 **INTERROGATORY NO. 7**

30 Identify all persons who designed, created, printed, or made each item on which
31 Applicant's Mark has ever been displayed, including without limitation all items that Applicant
32 was required to identify in response to the preceding interrogatory, and for each such person
33 identify which items were designed, created, or made by him or her.

34 **ANSWER TO INTERROGATORY NO. 7:**

35 Applicant and his spouse worked jointly on the design.

1
2 **INTERROGATORY NO. 8**

3 Identify each current or former employee of Applicant who was ever employed by,
4 affiliated with, or had any dealings with Opposer.

5
6 **ANSWER TO INTERROGATORY NO. 8:**

7 No such persons exist.

8 **INTERROGATORY NO. 9**

9 Identify all facts relating to any search or evaluation of any records conducted by or for
10 Applicant to determine whether other persons had used or registered any name or mark similar to
11 Applicant's Mark, or whether the use of Applicant's Mark would conflict with the rights of any
12 person, including the date of each search all records examined, and all persons involved in each
13 search.

14
15 **ANSWER TO INTERROGATORY NO. 9:**

16 Applicant's trademark attorney, Richard D. Clarke, performed a full US trademark search
17 in early October 2003. The specifics of said search are attorney work product and privileged.

18
19 **INTERROGATORY NO. 10**

20 Identify on an annual basis for each year since Applicant's Mark was first used, the total
21 amount of revenue received that relates to the sale or offering of any product or service sold
22 under Applicant's Mark.

23
24 **ANSWER TO INTERROGATORY NO. 10:**

25 Applicant has not used the mark in connection with the sale of any products or services.

26
27 **INTERROGATORY NO. 11**

28 Identify on an annual basis for each year since Applicant's Mark was first used the dollar
amount of advertising and promotional expenditures for each product or service offered under
Applicant's Mark.

ANSWER TO INTERROGATORY NO. 11:

Applicant has not used the mark in connection with the sale of any products or services.

INTERROGATORY NO. 12

Identify all advertising and promotional methods, or types of media, used or intended to
be used in advertising or promoting the sale of any products or services under Applicant's Mark,
specifying each publication, radio station, television station, Internet website, or other advertising

1 medium used in connection with such advertising or promotion, and the date(s) on which such
2 advertising or promotional activity occurred.

3 **ANSWER TO INTERROGATORY NO. 12:**

4 Applicant has not used the mark in connection with the sale of any products or services.

5 **INTERROGATORY NO. 13**

6 Identify each advertising agency, public relations firm, or person that has ever performed
7 any services relating to the advertising or publicizing of Applicant's Mark and all persons at each
8 such firm or agency who have had any responsibility for Applicant's account.

9 **ANSWER TO INTERROGATORY NO. 13:**

10 Applicant has not used the mark in connection with any product or service to date.

11 **INTERROGATORY NO. 14**

12 Identify the types of prospective purchasers or customers who have used or purchased, or
13 who may use or purchase, the products and services in connection with which Applicant's Mark
is used.

14 **ANSWER TO INTERROGATORY NO. 14:**

15 Applicant has not used the Mark in connection with any product or service to date.

16 **INTERROGATORY NO. 15**

17 Identify and describe all communications, meetings, or conversations between Applicant
18 and Opposer relating to Applicant's Mark, and the substance of each communication, meeting, or
19 conversation.

20 **ANSWER TO INTERROGATORY NO. 15:**

21 Applicant and Opposer have never met or communicated.

22 **INTERROGATORY NO. 16**

23 Identify all documents referring or relating to any objection received by Applicant from
24 any third party concerning the use or registration of Applicant's Mark.

25 **ANSWER TO INTERROGATORY NO. 16:**

26 Applicant has never received any such objection from a third party.

27 **INTERROGATORY NO. 17**

28 Describe with particularity the facts relating to each instance in which a person has been
(or has appeared to be) confused, mistaken, or deceived as to the identity of the parties to this

1 action or as to the origin, source, sponsorship, or affiliation of their respective product(s) or
2 service(s), including without limitation the identity of each person who was confused or
3 mistaken, the date and place of the incident, a description of the circumstances that led to the
4 person's being confused, mistaken, or deceived, how Applicant became aware of the confusion,
5 the product(s) or service(s) involved, all action taken with respect to the confusion, and the
6 identity of the each person who handled such response.

7 **ANSWER TO INTERROGATORY NO. 17:**

8 No such actual confusion has taken place.

9 **INTERROGATORY NO. 18**

10 Identify all misdirected phone calls, correspondence, e-mails, or other communications
11 received by Applicant that were intended for Opposer.

12 **ANSWER TO INTERROGATORY NO. 18:**

13 No such communications have ever occurred.

14 **INTERROGATORY NO. 19**

15 Identify all Internet web sites, trade associations, wholesale or retail outlets, direct mail
16 operations, or other trade channels through which any goods or services have been sold or are
17 intended to be sold under Applicant's Mark.

18 **ANSWER TO INTERROGATORY NO. 19:**

19 Applicant intends to promote his services via the Internet on one or more web sites, and
20 for this purpose has reserved www.ritzspectrum.com and www.ritzgalleries.com (both posted as
21 coming soon).

22 **INTERROGATORY NO. 20**

23 Identify and describe all oral or written agreements, including all assignments and
24 licenses entered into by Applicant, referring or relating to Applicant's Mark, specifying the date
25 of each agreement, the identity of all the parties thereto, and the reason and purpose of the
26 agreement.

27 **ANSWER TO INTERROGATORY NO. 20:**

28 No such agreements exist.

INTERROGATORY NO. 21

If Applicant claims to have acquired by rights in Applicant's Mark through any
predecessor in interest, identify and describe the facts pertaining to said acquisition, including
each such predecessor and the date on which each purported use of Applicant's Mark began and
ended.

ANSWER TO INTERROGATORY NO. 21:

No such predecessor rights exist.

1 **INTERROGATORY NO. 22**

2 If Applicant or any predecessor or related company has ever applied to register
3 Applicant's Mark in the Patent and Trademark Office or with any state, identify and describe the
4 facts pertaining to each such application, including without limitation the status of the
5 application, whether or not any registration was issued, and any reasons for which registration
6 was denied.

7 **ANSWER TO INTERROGATORY NO. 22:**

8 No such state applications exist. Opposer has full knowledge of Applicant's federal
9 application to register the mark that is the subject of this Opposition proceeding.

10 **INTERROGATORY NO. 23**

11 Identify and describe any survey, poll, or other research conducted by or on behalf of
12 Applicant referring or relating to Applicant's Mark, or the goods or services offered or intended
13 to be offered under Applicant's Mark, including the identity of all persons who conducted or
14 have knowledge of such research.

15 **ANSWER TO INTERROGATORY NO. 23:**

16 No such survey, poll, or other research exists.

17 **INTERROGATORY NO. 24**

18 Identify all expert witnesses expected to be called to testify on Applicant's behalf in this
19 proceeding, including the subject area on which each expert will testify, the substance of any
20 facts and opinions to which each expert is expected to testify, a summary of the grounds for each
21 opinion, and the facts showing the qualification of each expert.

22 **ANSWER TO INTERROGATORY NO. 24:**

23 No expert witnesses are currently expected to be called to testify.

24 **INTERROGATORY NO. 25**

25 Identify and describe the facts relating to any negotiations, transactions, or sales entered
26 into between Applicant and any entities in the hotel or restaurant field relating to the services
27 listed in Applicant's application Serial No. 76/553,029.

28 **ANSWER TO INTERROGATORY NO. 25:**

No such negotiations, transactions or sales exist.

INTERROGATORY NO. 26

Identify each address or geographical location at which Applicant has ever offered any
goods or services under Applicant's Mark.

ANSWER TO INTERROGATORY NO. 26:

Applicant has not used the mark in connection with the sale of any products or services.

1 **INTERROGATORY NO. 27**

2 Identify and describe the facts relating to any business license Applicant ever obtained in
3 connection with any business that has ever been operated under Applicant's Mark.

4 **ANSWER TO INTERROGATORY NO. 27:**

5 Applicant has never operated a business under Applicant's mark. Applicant filed for and
6 obtained a Fictitious Business Name Statement on December 17, 2003.

7 **INTERROGATORY NO. 28**

8 Identify and describe all objections received by Applicant, from Opposer or any third
9 party, relating to the use, attempted registration, or registration of Applicant's Mark, specifying
10 the identity of each person from whom any such objection was received, the date of the
11 objection, and all action taken in response to the objection.

12 **ANSWER TO INTERROGATORY NO. 28:**

13 No such third party objections exist. Opposer has full knowledge of Opposer's objections
14 to Applicant's federal application to register the mark that is the subject of this Opposition
15 proceeding.

16 **INTERROGATORY NO. 29**

17 Identify each person who provided information or otherwise assisted in the preparation of
18 answers to the foregoing interrogatories, specifying the information which he or she provided.

19 **ANSWER TO INTERROGATORY NO. 29:**

20 Applicant himself, his spouse Elena Jurate Wilcox, and his trademark attorney Richard D.
21 Clarke, for all foregoing answers.

22 **II. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

23 Applicant is hereby requested to produce for inspection and/or copying by Opposer, or to cause
24 copies to be provided to Opposer, the documents and things specified hereunder, to the extent
25 that such documents and things are in possession, custody or control of Applicant or Applicant's
26 attorneys:

27 **REQUEST NO. 1**

28 All documents that Applicant was required to identify in its responses to Opposer's first
set of interrogatories, or from which information was derived in preparing those responses.

RESPONSE TO REQUEST NO. 1:

Exhibit 1 and Exhibit 2 illustrate the present web site located at URL's
www.ritzspectrum.com and www.ritzgalleries.com respectively.

1 **REQUEST NO. 2**

2 All documents referring or relating to the date(s) and manner in which Applicant or any
3 of its officers, directors, or managing agents first learned of the use or registration of Opposer's
4 Marks.

5 **RESPONSE TO REQUEST NO. 2:**

6 No such documents exist, or said documents are privileged.

7 **REQUEST NO. 3**

8 All documents referring or relating to the organization, status, and structure of Applicant
9 or any business owned, operated, or controlled by Applicant, including without limitation any
10 charter, articles of incorporation, by-laws, or similar documents, and any lists of Applicant's
current or former officers, directors, and managerial employees and descriptions of their duties
and responsibilities.

11 **RESPONSE TO REQUEST NO. 3:**

12 No such documents exist.

13 **REQUEST NO. 4**

14 All documents referring or relating to the acquisition, selection, availability, adoption,
15 creation, design, decision to use, intent to use, attempt to register, or registration of Applicant's
16 Mark, including without limitation, any minutes or notes from any meetings in which such topics
were discussed.

17 **RESPONSE TO REQUEST NO. 4:**

18 No such documents exist. Exhibit 3 includes Applicant's ITU application documentation.

19 **REQUEST NO. 5**

20 All documents referring or relating to any search or evaluation of any records conducted
21 by or on behalf of Applicant to determine whether other persons had used or sought registration
22 of any mark or image similar to Applicant's Mark.

23 **RESPONSE TO REQUEST NO. 5:**

24 No such documents exist, or said documents are privileged.

25 **REQUEST NO. 6**

26 Representative samples of all documents or other materials on which Applicant's Mark
27 has been displayed, including without limitation e-mail, direct mail solicitations, signs,
28 directories, clothing, accessories, advertisements, forms, packages, labels, promotional items,
financial reports, price lists, brochures, sales literature, catalogs, billboards, handbills, stationery,

1 business cards, decals, badges, Internet web sites, computer screens, annual reports, and all other
2 materials.

3 **RESPONSE TO REQUEST NO. 6:**

4 Exhibit 1 and Exhibit 2 include Applicant's web pages found at two URL's. Exhibit 4
5 and Exhibit 5 include a proposed letterhead and business card, respectively.

6 **REQUEST NO. 7**

7 All documents referring or relating to the creation, design, development, printing, or
8 manufacture of any materials on which Applicant's Mark ever been displayed, including without
9 limitation any correspondence, purchase orders, records of payment or invoices sent to or
10 received from any person involved in such creation, design, development, or manufacture.

11 **RESPONSE TO REQUEST NO. 7:**

12 Exhibit 1 and Exhibit 2 include Applicant's web pages found at two URL's. Exhibit 4
13 and Exhibit 5 include a proposed letterhead and business card, respectively.

14 **REQUEST NO. 8**

15 Representative samples of all documents or other materials which identify, explain or
16 describe each of the products or services ever offered or sold, or intended to be offered or sold,
under Applicant's Mark, including without limitation any brochures, web sites, advertisements,
catalogs, price lists, training materials, memoranda, and bulletins.

17 **RESPONSE TO REQUEST NO. 8:**

18 No such documents exist.

19 **REQUEST NO. 9**

20 All documents referring or relating to the date and manner in which Applicant's Mark
21 was first used by Applicant or on its behalf in connection with the sale of each type of product or
22 service ever offered under that designation.

23 **RESPONSE TO REQUEST NO. 9:**

24 No such documents exist.

25 **REQUEST NO. 10**

26 All documents referring or relating to the date and manner in which Applicant's Mark
27 was first used in connection with the advertising of each type of product or service ever offered
28 under that designation.

1 **RESPONSE TO REQUEST NO. 10:**

2 No such documents exist.

3
4 **REQUEST NO. 11**

5 All documents referring or relating to the volume of sales of goods or services sold by
6 Applicant under Applicant's Mark, including documents relating to the total amount of revenue
7 Applicant has derived from the sale of any products or services on which Applicant's Mark has
8 been used from the date of first use to the present. Such documents should include without
9 limitation all sales invoices, reports, ledgers, journals, sales summaries, and purchase orders.

10 **RESPONSE TO REQUEST NO. 11:**

11 No such documents exist.

12 **REQUEST NO. 12**

13 All documents referring or relating to the nature and amount of any and all advertising or
14 promotional expenditures incurred in connection with Applicant's Mark from the date of first use
15 to the present.

16 **RESPONSE TO REQUEST NO. 12:**

17 No such documents exist.

18 **REQUEST NO. 13**

19 All documents referring or relating to Applicant's Mark sent to or received from any
20 advertising agency, public relations firm, or design firm.

21 **RESPONSE TO REQUEST NO. 13:**

22 No such documents exist.

23 **REQUEST NO. 14**

24 All documents referring or relating to any meetings, correspondence, telephone calls, or
25 other communications between Applicant and Opposer.

26 **RESPONSE TO REQUEST NO. 14:**

27 No such documents exist.

28 **REQUEST NO. 15**

 All documents referring or relating to Applicant's Mark filed with or received from any
 federal, state or local governmental office or regulatory agency, including without limitation all
 documents filed or received in connection with any application to register Applicant's Mark and

1 all documents relating to any business licenses.

2 **RESPONSE TO REQUEST NO. 15:**

3 Exhibit 6 includes a Fictitious Business Name Statement. Exhibit 2 includes Applicant's
4 ITU application as filed with the USPTO.

5 **REQUEST NO. 16**

6 All documents referring or relating to any objection received by Applicant from any third
party concerning use, attempted registration, or registration of Applicant's Mark.

7 **RESPONSE TO REQUEST NO. 16:**

8 No such documents exist.

9 **REQUEST NO. 17**

10 All documents referring or relating to any civil, criminal, or administrative action or
11 proceeding involving Applicant's Mark, including without limitation any proceeding before the
12 United States Patent and Trademark Office, or any state or federal court.

13 **RESPONSE TO REQUEST NO. 17:**

14 No such documents exist apart from the ITU application (Exhibit 2) and this Opposition
proceeding.

15 **REQUEST NO. 18**

16 All documents referring or relating to any complaints received from customers or others
17 concerning the nature or quality of any goods or services sold by Applicant under Applicant's
18 Mark or advertisements used in connection with such goods or services.

19 **RESPONSE TO REQUEST NO. 18:**

20 No such documents exist.

21 **REQUEST NO. 19**

22 All documents referring or relating to any press release, newspaper article, newsletter, or
23 other publication which mentions Applicant or any of its goods or services sold or offered, or
intended to be sold or offered, under Applicant's Mark.

24 **RESPONSE TO REQUEST NO. 19:**

25 No such documents exist.

26 **REQUEST NO. 20**

27 All documents referring or relating to any action taken by Applicant to identify or prevent
28 any instances of alleged confusion arising from the use of Applicant's Mark.

1
2 **RESPONSE TO REQUEST NO. 20:**

3 No such documents exist.
4

5 **REQUEST NO. 21**

6 All documents referring or relating to any misdirected mail, telephone calls, or other
7 instances wherein any person or business entity has been (or appeared to be) confused, mistaken,
8 or deceived as a result of the use of Applicant's Mark.

8 **RESPONSE TO REQUEST NO. 21:**

9 No such documents exist.
10

11 **REQUEST NO. 22**

12 All documents referring or relating to any action taken by Applicant to identify or prevent
13 any instances of confusion arising from the use of Applicant's Mark.

13 **RESPONSE TO REQUEST NO. 22:**

14 No such documents exist.
15

16 **REQUEST NO. 23**

17 All documents referring or relating to the target audience for any advertisements that have
18 displayed Applicant's Mark.

18 **RESPONSE TO REQUEST NO. 23:**

19 No such documents exist.
20

21 **REQUEST NO. 24**

22 All documents referring or relating to the classes or types of purchasers to whom products
23 or services have been sold or offered, or are intended to be sold or offered, by Applicant under
24 Applicant's Mark.

24 **RESPONSE TO REQUEST NO. 24:**

25 No such documents exist.
26

26 **REQUEST NO. 25**

27 All documents referring or relating to the methods of sale or channels of trade or
28 distribution through which goods or services have been sold or offered, or are intended to be sold
or offered, by Applicant under Applicant's Mark.

1 **RESPONSE TO REQUEST NO. 25:**

2 No such documents exist.

3
4 **REQUEST NO. 26**

5 All documents on which Applicant bases its claim that it has exclusive rights in
6 Applicant's Mark.

7 **RESPONSE TO REQUEST NO. 26:**

8 Exhibit 2 includes Applicant's ITU application, as a result, Applicant claims exclusive
9 rights in Applicant's mark as of October 21, 2003, the date of filing, and the date of constructive
10 use of said mark.

11 **REQUEST NO. 27**

12 All documents referring or relating to any claims by Applicant concerning the extent to
13 which Applicant's Mark has become associated with Applicant in the minds of prospective
14 purchasers or the extent to which Applicant's Mark is known to such purchasers..

15 **RESPONSE TO REQUEST NO. 27:**

16 No such documents exist.

17 **REQUEST NO. 28**

18 All documents referring or relating to any focus group, survey, poll, or other research
19 referring or relating to Applicant's Mark or the goods or services offered or intended to be
20 offered under that mark.

21 **RESPONSE TO REQUEST NO.28:**

22 No such documents exist.

23 **REQUEST NO. 29**

24 All documents referring or relating to Applicant's document retention policies.

25 **RESPONSE TO REQUEST NO. 29:**

26 No such documents exist.

27 **REQUEST NO. 30**

28 All documents referring or relating to the compliance or non-compliance by Applicant
with federal, state and local laws and regulations in connection with goods or services sold under
Applicant's Mark.

1 **RESPONSE TO REQUEST NO. 30:**

2 No such documents exist.

3
4 **REQUEST NO. 31**

5 Copies of any licenses, assignments, or other agreements referring or related to
6 Applicant's Mark.

7 **RESPONSE TO REQUEST NO. 31:**

8 No such documents exist.

9 **REQUEST NO. 32**

10 All documents referring or relating to prospective purchasers of goods or services sold
11 under Applicant's Mark.

12 **RESPONSE TO REQUEST NO. 32:**

13 No such documents exist.

14 **REQUEST NO. 33**

15 All documents referring or relating to each address or geographical location at which
16 Applicant has ever offered any goods or services under Applicant's Mark.

17 **RESPONSE TO REQUEST NO. 33:**

18 No such documents exist.

19 **REQUEST NO. 34**

20 All documents referring or relating to any objections received by Applicant from Opposer
21 or any third party relating to the use or registration of Applicant's Mark.

22 **RESPONSE TO REQUEST NO. 34:**

23 No such documents exist. Opposer has full knowledge of all Opposer based objections.

24 **REQUEST NO. 35**

25 All documents referring or relating to any objections made by Applicant concerning the
26 use or registration of any name, mark, trade dress, or other form of intellectual (property) (sic) by
27 any third party.

28 **RESPONSE TO REQUEST NO. 35:**

 No such documents exist.

1 **REQUEST NO. 36**

2 All documents referring or relating to any negotiations, transactions, or sales entered into
3 between Applicant and any entities in the hotel or restaurant field relating to the services listed in
4 Applicant's application Serial No. 76/553029.

5 **RESPONSE TO REQUEST NO. 36:**

6 No such documents exist.

7 **REQUEST NO. 37**

8 All documents that Applicant has sent to or received from any business referral services,
9 including any contracts, correspondence, or information summaries.

10 **RESPONSE TO REQUEST NO. 37:**

11 No such documents exist.

12 **REQUEST NO. 38**

13 All documents referring or relating to the prices charged by Applicant for goods or
14 services offered or intended to be offered under Applicant's Mark.

15 **RESPONSE TO REQUEST NO. 38:**

16 No such documents exist.

17 Respectfully submitted,
18 LAW OFFICE OF RICHARD D. CLARKE

19 DATE: 11/17/2004

20 By: Richard D. Clarke
21 Richard D. Clarke,
22 Attorney for Applicant
23 Robert B. Wilcox, an individual

24 Richard D. Clarke, Esq.
25 Law Office of Richard D. Clarke
26 3755 Avocado Blvd., #1000
27 La Mesa, CA 91941-7301

28 Tel: 619-670-1702
Fax: 619-670-7585

E-mail: RClarkeEsq@sbcglobal.net

USPTO Reg. No. 38,846

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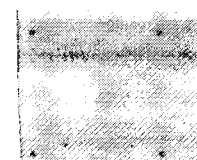
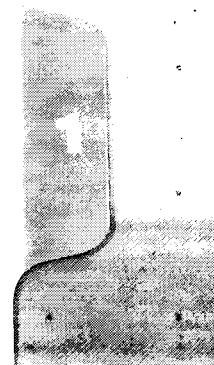
CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing answers to **Opposer's First Set of Interrogatories, and Opposer's First Request for Production of Documents** propounded by Opposer, The Ritz-Carlton Hotel Company LLC, in Opposition No. 91161969, was served upon the following attorneys of record for Opposer by depositing a true copy of same with the United States Postal Service as first class mail, postage prepaid, on this **17th day of November, 2004**.

Michael A. Grow, Esq.
Douglas R. Bush, Esq.
Jason J. Mazur, Esq.
ARENT FOX PLLC
1050 Connecticut Ave., NW
Washington, D.C. 20036
(202) 857-6000



Richard D. Clarke



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EXHIBIT NO. 1

RITZ SPECTRUM GALLERIES

o f L a J o l l a

Coming Soon

7825 Fay Avenue, Suite 200, La Jolla, California, 92037, USA

Phone: 858.454.9800 Fax: 858.729.9990

Contact Us

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EXHIBIT NO. 2

RITZ SPECTRUM GALLERIES

o f L a J o l l a

Coming Soon

7825 Fay Avenue, Suite 200, La Jolla, California, 92037, USA
Phone: 858.454.9800 Fax: 858.729.9990
Contact Us

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EXHIBIT NO. 3

TRADEMARK

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant:	Robert B. Wilcox, an Individual)	Attorney
)	Docket No.: 03-RIT/501
Serial No.:	--)	
)	
Filed:	herewith)	
)	
Mark:	RITZ)	ER273439875US
)	
)	

LETTER TRANSMITTING TRADEMARK APPLICATION

Commissioner for Trademarks
BOX NEW APP/FEE
2900 Crystal Drive
Arlington, Virginia 22202-3514

Dear Sir:

I am enclosing herewith for filing an **intent-to-use (ITU)** trademark application for registration of the mark **"RITZ"**, together with a drawing sheet of the mark, and an executed Power of Attorney. Enclosed also please find check No. 34101 in the amount of \$335.00 to cover the filing fee for **one (1)** international class, and a self-addressed stamped return acknowledgment postcard.

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

I hereby certify that this correspondence is addressed to the Commissioner for Trademarks, BOX NEW APP/FEE, 2900 Crystal Drive, Arlington, VA 22202-3514, and is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR §1.10 on October 20, 2003.

Date: October 20, 2003 "Express Mail" mailing label No. ER273439875US

Signed: Richard D. Clarke
Richard D. Clarke

TRADEMARK

IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE

IN RE: TRADEMARK APPLICATION OF
Robert B. Wilcox, an individual
("Applicant")

MARK: **RITZ**

CLASS: **035**

APPLICATION FOR TRADEMARK
REGISTRATION ON THE
PRINCIPAL REGISTER

TO: Commissioner of Patent and Trademarks

The above-referenced Applicant, **Robert B. Wilcox**, an individual, and U.S. citizen, having a business address at **1538 Vista Claridad, La Jolla, California 92037**, requests registration of the above-identified trademark as shown in the accompanying drawing in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. 1051 et. seq., as amended) for the following services: **Art galleries offering original and limited edition fine art, namely, paintings, photographs, sculptures and prints, in International Class 035.** Applicant has a *bona fide* intent to use the trademark in interstate commerce on or in connection with the above-identified services. The Applicant intends to use the mark in interstate commerce in connection with such services by placing it directly onto promotional literature, business signs, advertisements, catalogs, Internet web pages, brochures, yellow page ads, business cards, letterhead and envelopes.

DECLARATION

The undersigned, being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements may jeopardize the validity of this Application or any resulting registration, declares: he is properly authorized to execute this Application on behalf of the Applicant; he believes the Applicant to be the owner of the trademark mark sought to be registered, or, if the Application is being filed under 15 U.S.C. Section 1051(b), he believes Applicant to be entitled to use such mark in commerce; to the best of his knowledge and belief no other person, firm, corporation or association has the right to use the above-referenced mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods of such other person, to cause confusion, or to cause mistake, or to deceive; the facts set forth in this Application are true and correct; and that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated: October 10, 2003

Robert B. Wilcox
Business Tel.: 858-729-9900

By: _____



Robert B. Wilcox,
an individual

Applicant:

Robert B. Wilcox,
an individual

Address:

1538 Vista Claridad
La Jolla, CA 92037

Goods:

Art galleries offering original and
limited edition fine art, namely,
paintings, photographs, sculptures
and prints, in International Class 035.

Date of First Use:

ITU Application

Date of First Use in Commerce:

ITU Application

RITZ

TRADEMARK

**IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE**

IN RE: TRADEMARK APPLICATION OF
Robert B. Wilcox, an individual
("Applicant")

MARK: **RITZ**

CLASS: **035**

POWER OF ATTORNEY

Honorable Commissioner of Patents
and Trademarks
Washington, D.C. 20231

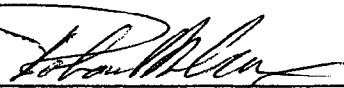
Sir:

COMES NOW the above applicant, **Robert B. Wilcox**, an individual, and citizen of the U.S., having a business address at **1538 Vista Claridad, La Jolla, CA 92037**, and canceling all previous Power of Attorneys, hereby appoints **Richard D. Clarke**, a member of the bar of the State of California and registered to practice before the United States Patent and Trademark Office, of the Law Office of Richard D. Clarke, having a business/mailling address at **3755 Avocado Blvd., #1000**,

La Mesa, California 91941-7301, telephone 619-670-1702 and facsimile 619-670-7585, as his attorney with full power of substitution, association and revocation, to prosecute the above application, to transact all business in the Patent and Trademark Office in connection therewith, to receive the Certificate of Registration and to represent him in all proceedings affecting the mark which may arise in the Patent and Trademark Office after the registration has been granted.

Dated: October 10, 2003

Robert B. Wilcox
Business Tel.: 858-729-9900

By: 
Robert B. Wilcox,
an individual

Richard D. Clarke, Esq.
Law Office of Richard D. Clarke
3755 Avocado blvd., #1000
La Mesa, CA 91941-7301

Telephone 619-670-1702
Facsimile 619-670-7585

E-mail: RClarkeEsq@att.net

USPTO Reg. No. 38,846

The U.S. Patent and Trademark Office official mail room stamp affixed hereto acknowledges receipt of:

☒ Trademark/Service mark Application ITU
☒ 1 Drawing sheet words
☒ Power of Attorney
☐ Three specimens of use
☒ Check No. 34101 For \$ 335.00
☐ Assignment
☐ Amendment
☒ Transmittal letter dated October 20, 2003
☐ Extension of time (in duplicate)
☒ Certificate of Express Mail No. ER273439875US
☐ PTO form _____

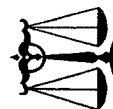
Atty/Sec

RBC/pk

Applicant Robert B. Wilcox Attorney Docket No. 03-RIT/501

Mark RITZ Date mailed October 20, 2003 via Express Mail

RICHARD D. CLARKE ESQ.
LAW OFFICE OF RICHARD D. CLARKE
ATTORNEY CLIENT TRUST ACCOUNT
PH. 619-670-1702
3755 AVOCADO BLVD. # 1000
LA MESA, CA 91941-7301



34101

03-RIT/501

90-3210/1222

PAY
TO THE
ORDER OF

DATE 20 OCT 03

Director of the USPTO

\$ 335.00

*****Three Hundred Thirty Five even*****

DOLLARS ☐



CALIFORNIA BANK & TRUST
MANHATTAN SAN DIEGO OFFICE
3787 AVOCADO BLVD., LA MESA, CALIFORNIA 91941

FORTM Appln. filing fee "RITZ"

Richard D. Clarke

034101 11222321091 2050021461

Customer Copy
Label 11-B September 2002



UNITED STATES POSTAL SERVICE®

Post Office To Addressee

ER 273439875 US

ORIGIN (POSTAL USE ONLY)

PO ZIP Code 91977	Day of Delivery <input checked="" type="checkbox"/> Next <input type="checkbox"/> Second	Flat Rate Envelope <input type="checkbox"/>
Date In Mo. Day Year 10/20/03	<input checked="" type="checkbox"/> 12 Noon <input type="checkbox"/> 3 PM	Postage \$ 13.65
Time In <input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Military <input type="checkbox"/> 2nd Day <input type="checkbox"/> 3rd Day	Return Receipt Fee
Weight lbs. 3 ozs.	Int'l Alpha Country Code	COD Fee \$
No Delivery <input type="checkbox"/> Weekend <input type="checkbox"/> Holiday	Acceptance Clerk Initials R	Insurance Fee
Total Postage & Fees \$ 13.65		

FROM: (PLEASE PRINT)

PHONE (

619 670-1702

Richard D. Clarke
Law Office of R. D. Clarke
3755 Avocado Blvd. #1000
La Mesa, CA 91941-7301

File No.: 03RIT/501

FOR PICKUP OR TRACKING CALL 1-800-222-1811

www.usps.com



PRESS HARD. You are making 3 copies.

DELIVERY (POSTAL USE ONLY)

Delivery Attempt	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	
Delivery Attempt	Time	Employee Signature
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Delivery Date	Time	Employee Signature
Mo. Day	<input type="checkbox"/> AM <input type="checkbox"/> PM	

CUSTOMER USE ONLY

PAYMENT BY ACCOUNT
Express Mail Corporate Acct. No.
Federal Agency Acct. No. or
Postal Service Acct. No.

☐ **WAIVER OF SIGNATURE (Domestic Only)**
Additional merchandise insurance is void if waiver of signature is requested.
I wish delivery to be made without obtaining signature of addressee or addressee's agent (if delivery employee judges that article can be left in secure location) and I authorize that delivery employee's signature constitutes valid proof of delivery.

☐ **NO DELIVERY**
☐ Weekend ☐ Holiday

Customer Signature

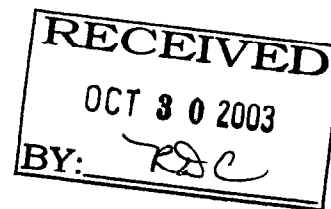
TO: (PLEASE PRINT)

PHONE (800 270 1999

Commissioner for Trademarks
EOX NEW APP/FEE
6900 Crystal Drive
Arlington, VA 22202-3514

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The U.S. Patent and Trademark Office official mail room stamp affixed hereto acknowledges receipt of:

- ☒ Trademark/Service mark Application ITU
☒ 1 Drawing sheet words
☒ Power of Attorney
☐ Three specimens of use
☒ Check No. 34101 For \$ 335.00
☐ Assignment
☐ Amendment
☒ Transmittal letter dated October 20, 2003
☐ Extension of time (in duplicate)
☒ Certificate of Express Mail No. ER273439875US
☐ PTO form _____



10-21-2003

U.S. Patent & TMOfc/TM Mail Rcpt Dt. #67

Atty/Sec

RDC/pk

Applicant Robert B. Wilcox Attorney Docket No. 03-RIT/501

Mark RITZ Date mailed October 20, 2003 via Express Mail



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EXHIBIT NO. 4

7825 Fay Avenue, Suite 200
La Jolla, California 92037 USA
800.536.0777
858.729.9990 Fax
RitzSpectrum.com



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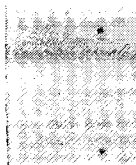
EXHIBIT NO. 5

7825 Fay Avenue,
Suite 200
La Jolla, California 92037
USA

RitzspectrumTM
Galleries

Elena Jurate Wilcox
Fine Art Director

858.454.9800 Direct Line
800.536.0777 Toll Free
858.729.9990 Fax
elena@ritzspectrum.com
RitzSpectrum.com



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EXHIBIT NO. 6

PLEASE PRINT/TYPE
INFORMATION
AND RETURN ENTIRE FORM

RECORDER/COUNTY CLERK
COUNTY OF SAN DIEGO
1600 PACIFIC HIGHWAY, RM. 260
P.O. BOX 121750 SAN DIEGO, CA 92112-1750
(619) 237-0502

W2003-039645

SEE BACK OF FORM
FOR INSTRUCTIONS

\$ 17.00- FOR FIRST BUSINESS NAME ON STATEMENT
\$ 3.00- FOR EACH ADDITIONAL BUSINESS NAME
FILED ON SAME STATEMENT AND DOING
BUSINESS AT THE SAME LOCATION
\$ 3.00- FOR EACH ADDITIONAL OWNER IN EXCESS
OF ONE OWNER

FILED
1/29/04
1:00 PM
COUNTY OF SAN DIEGO
CLERK OF SUPERIOR COURT
1600 PACIFIC HIGHWAY, RM. 260
SAN DIEGO, CA 92112-1750
THIS SPACE FOR USE OF RECORDER/COUNTY CLERK

FICTITIOUS BUSINESS NAME STATEMENT

(1) FICTITIOUS BUSINESS NAME(S):

☐ Renewal Notification is an additional \$5.00 fee

a. RITZ, RITZ GALLERY, RITZ GALLERY, RITZ GALLERY, RITZ GALLERY
b. SPECTRUM, SPECTRUM GALLERY, SPECTRUM GALLERY, SPECTRUM GALLERY, SPECTRUM GALLERY

(2) LOCATED AT:

1538 VISTA CLAYDA
(Must have Street Address of Business including City, State, and Zip-- P.O. Box not acceptable)

Mailing Address:

(Optional)

(3) THIS BUSINESS IS CONDUCTED BY:

- A. ☒ An Individual
B. ☐ Husband and Wife
C. ☐ A General Partnership
D. ☐ A Limited Partnership

- E. ☐ Joint Venture
F. ☐ A Corporation
G. ☐ A Business Trust
H. ☐ Co-Partners

- I. ☐ A Limited Liability Company
J. ☐ An Unincorporated Association-Other than a Partnership
K. ☐ Other (Please Specify)

(4) THE FIRST DAY OF BUSINESS WAS:

OR IF NOT YET STARTED, CHECK HERE ☒

(5) THIS BUSINESS IS HEREBY REGISTERED BY THE FOLLOWING:

#1 ROBERT B. WILCOX
Owner's Name or Corporation Name if incorporated

#2 _____
Owner's Name or Corporation Name if incorporated

1538 VISTA CLAYDA
Residence Address or give STATE if incorporated

Residence Address or give STATE if incorporated

LA JOLLA CA 92037
City State Zip

City State Zip

#3 _____
Owner's Name or Corporation Name if incorporated

#4 _____
Owner's Name or Corporation Name if incorporated

Residence Address or give STATE if incorporated

Residence Address or give STATE if incorporated

City State Zip

City State Zip

I declare that all information in this statement is true and correct. (A registrant who declares as true information which he or she knows to be false is guilty of perjury.)

(6)

[Signature]
(Signature of Registrant)

ROBERT B. WILCOX
(Print name of person signing and, if Corporate Officer, also state title)

THIS STATEMENT WAS FILED WITH GREGORY J. SMITH, RECORDER/COUNTY CLERK OF SAN DIEGO COUNTY AS INDICATED BY FILE STAMP ABOVE.
NOTICE - THIS FICTITIOUS NAME STATEMENT EXPIRES FIVE (5) YEARS FROM THE DATE IT WAS FILED IN THE OFFICE OF THE CLERK OF SUPERIOR COURT.
FICTITIOUS BUSINESS NAME STATEMENT MUST BE FILED BEFORE THAT TIME.
THE FILING OF THIS STATEMENT DOES NOT OF ITSELF AUTHORIZE THE USE IN THIS STATE OF A FICTITIOUS BUSINESS NAME IN VIOLATION OF THE PENAL CODE, ANOTHER UNDER FEDERAL, STATE, OR COMMON LAW (SEE SECTION 14411 ET SEQ., BUSINESS AND PROFESSIONS CODE).
IT IS THE RESPONSIBILITY OF THE REGISTRANT TO DETERMINE THAT THE FICTITIOUS BUSINESS NAME SELECTED WILL NOT VIOLATE ANOTHER'S RIGHTS ESTABLISHED UNDER LAW.

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F

Arent Fox
ATTORNEYS AT LAW

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

February 22, 2005

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

We are writing to address the deficiencies in your client Robert Wilcox's Answers to Ritz-Carlton's First Set of Interrogatories and First Request for Production of Documents. The purpose of this letter is to attempt to resolve the deficiencies informally.

As an initial matter, we note that Mr. Wilcox has not signed his Answer to the interrogatories pursuant to TBMP § 405.04(c). Please advise if your client will provide a signed Answer.

Interrogatory No. 3: The answer to this interrogatory is incomplete. It omits information requested, such as facts relating to the availability, intent to use, decision to use, attempt to register, and date of selection of RITZ. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

Interrogatory No. 7: The answer to this interrogatory is incomplete. Although it specifies that Mr. Wilcox and his spouse worked jointly on the designs, it omits information requested, such as the identity of all persons who created, printed, or made each item on which RITZ has ever been displayed. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

Interrogatory No. 12: The answer to this interrogatory is incomplete. It omits information concerning the advertising and promotional methods, or types of media, *intended to be used* by Mr. Wilcox. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

Interrogatory No. 14: The answer to this interrogatory is incomplete. It omits information concerning the types of prospective purchasers or customers *who may use or purchase* the products or services specified. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

TECH/283544.1

February 22, 2005
Richard D. Clarke, Esq.
Page 2

Interrogatory No. 19: Please confirm that the Internet is the only trade channel through which your client intends to offer goods or services under RITZ.

Interrogatory No. 22: The answer to this interrogatory is incomplete. Merely because Ritz-Carlton may have knowledge of Mr. Wilcox's federal application does not excuse his obligation to answer this interrogatory. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

Interrogatory No. 28: The answer to this interrogatory is incomplete. Again, merely because Ritz-Carlton may have knowledge of its objections does not excuse Mr. Wilcox's obligation to answer this interrogatory. Further, the answer fails to state what action was taken in response to the objection. Please advise if Mr. Wilcox will supplement this answer to provide all requested information.

Document Request Nos. 2, 4, 5, 34: The responses to these document requests are ambiguous and contradictory. Either no documents exist, or there are responsive documents. Please advise if Mr. Wilcox will supplement these responses to clarify his answers and produce all responsive documents. If there are responsive documents that Mr. Wilcox claims are privileged, please produce a privilege log that specifies the author of any such documents, the recipient, any persons to whom copies were furnished, the job titles of all such persons involved, the date and subject matter of the document, and the nature of the privilege claimed. This information is requested in Instruction J of Ritz-Carlton's First Set of Interrogatories and on the first page of Ritz-Carlton's First Request for Production of Documents.

Clearly, at least some responsive documents exist. For example, Mr. Wilcox states in his answer to Interrogatory No. 2 that a full U.S. trademark search was conducted prior to the filing of the application. Please produce the results of the trademark search, as it is not protected by any privilege.

Document Request No. 8: Please confirm that there are no responsive documents that identify, explain, or describe any goods or services Mr. Wilcox intends to offer under RITZ.

With respect to all of the foregoing, we look forward to receiving any supplemental responses that Mr. Wilcox will agree to make voluntarily and any responsive documents, as well as a privilege log.

Sincerely,



Jason J. Mazur

cc: Michael A. Grow

4

Richard D. Clarke
INTELLECTUAL PROPERTY ATTORNEY
3755 Avocado Blvd., #1000
La Mesa, CA 91941-7301
Telephone 619-670-1702 Facsimile 619-670-7585

March 2, 2005

VIA FACSIMILE AND U.S. MAIL

202-857-6395

Jason Mazur, Esq.
Arent Fox, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

RE: Ritz-Carlton v. Robert Wilcox (Opposition No.91161969)

Dear Mr. Mazur:

This letter is in response to your letter dated February 22, 2005, that addresses your perceived deficiencies in my client's answers to Ritz-Carlton's interrogatories and production requests.

As an initial matter, your insistence that Mr. Wilcox provide a signed answer to the propounded interrogatories pursuant to TBMP §405.04(c) has no basis. TBMP §405.04(c) states in relevant part:

“Interrogatories must be answered by the party served... Answers to interrogatories must be signed by the *person making them*, and objections to interrogatories must be signed by the attorney making them.”

My office prepared the interrogatories in response to answers from Mr. Wilcox. Thus, my signature was the only signature required by the rules. Coincidentally, the only signature supplied on the answers to the interrogatories propounded to Ritz-Carlton was that of your own. Hence, by your incorrect logic, Ritz-Carlton's answer to my client's interrogatories would be deficient as well.

With that aside, although my client provided full and complete answers to *all* of your interrogatories and requests for documents, I will address your issues in an informal, good-faith attempt to resolve any confusion you and your client may have.

Interrogatory No. 3

Your alleged deficiency: The answer to this interrogatory is incomplete. It omits information requested, such as facts relating to the availability, intent to use, decision to use, attempt to register, and date of selection of RITZ.

Applicant's good-faith response: Applicant and his spouse participated in the selection of the mark. There is no specific reason for the selection of the mark. Furthermore, facts relating to the intent to use and registration of Applicant's mark can be found in Exhibit No. 3 of Applicant's answer to Opposer's request for production.

Interrogatory No. 7

Your alleged deficiency: The answer to this interrogatory is incomplete. Although it specifies that Mr. Wilcox and his spouse worked jointly on the designs, it omits information requested, such as the identity of all persons who created, printed, or made each item on which RITZ has ever been displayed.

Applicant's good-faith response: As the answer to Interrogatory No. 6 indicates, applicant has not used the "RITZ" mark in connection with any product or service to date. Applicant has a business card and letterhead design containing a composite "RITZSPECTRUM" mark, which, as indicated in the answer to Interrogatory No. 7, Applicant and his spouse worked jointly on the design.

Interrogatory No. 12

Your alleged deficiency: The answer to this interrogatory is incomplete. It omits information concerning the advertising and promotional methods, or types of media, *intended to be used* by Mr. Wilcox.

Applicant's good-faith response: As the answer to Interrogatory No. 6 indicates, Applicant has not used the "RITZ" mark in connection with any product or service to date. Interrogatory No. 12 requests identification of "all advertising and promotional methods, or types of media, used *or* intended to be used in advertising, or promoting the sale of any products or services under Applicant's Mark, specifying each "publication, radio station, television station, Internet website, or other advertising medium *used* in connection with such advertising or promotion, and the date(s) on which such advertising or promotional activity *occurred*." As Applicant has not used the "RITZ" mark in connection with any product or service to date, the answer provided is full and complete.

Interrogatory No. 14

Your alleged deficiency: The answer to this interrogatory is incomplete. It omits information concerning the types of prospective purchasers or customers *who may use or purchase* the products or services specified.

Applicant's good-faith response: As the answer to Interrogatory No. 6 indicates, Applicant has not used the "RITZ" mark in connection with any product or service to date. Thus, there are no products or services specified. Hence, the provided response does not omit information concerning the types of prospective purchasers or customers who may use or purchase the products or services *specified*.

Interrogatory No. 19

Your alleged deficiency: Please confirm that the Internet is the only trade channel through which your client intends to offer goods or services under RITZ.

Applicant's good-faith response: The answer provided to Interrogatory No. 19 was full and complete. Your alleged deficiency requests more information from Mr. Wilcox. Should Ritz-Carlton wish to issue a second set of interrogatories to Mr. Wilcox, it may do so as permitted by the rules and procedures set forth in the TBMP.

Interrogatory No. 22

Your alleged deficiency: The answer to this interrogatory is incomplete. Merely because Ritz-Carlton may have knowledge of Mr. Wilcox's federal application does not excuse his obligation to answer this Interrogatory.

Applicant's good-faith response: Again, the answer provided to Interrogatory No. 22 was full and complete. There was no such state application filed. Additionally, Opposer has full knowledge of Applicant's federal application to register the mark that is the subject of this Opposition proceeding. Furthermore, as noted by TBMP §402.02, the right to discovery is not limited. Similar to FRCP Rule 26(b)(2)(I), TBMP §402.02 places *limits* on discoverable matter to discovery that is not "unreasonably cumulative or duplicative, *or is obtainable from some other source that is more convenient, less burdensome, or less expensive.*" Since Ritz-Carlton *already* has knowledge of Mr. Wilcox's federal application, it is more inconvenient, more burdensome, and more expensive to burden Mr. Wilcox with having to produce this information. Thus, Mr. Wilcox's answer to Interrogatory No. 22 was full and complete in accordance with the scope of discovery allowed by the rules.

Interrogatory No. 28

Your alleged deficiency: The answer to this interrogatory is incomplete. Again, merely because Ritz-Carlton may have knowledge of its objections does not excuse Mr. Wilcox's obligation to answer this interrogatory. Further, the answer fails to state what action was taken in response to the objection.

Applicant's good-faith response: Refer to my previous response. Review your file on this matter to gain information on what action was taken in response to the objections.

Document Request Nos. 2, 4, 5, 34

Your alleged deficiencies: The responses to these document requests are ambiguous and contradictory. Either no documents exist, or there are responsive documents.

Applicant's good-faith response: As the answers clearly state, "no such documents exist, or said documents are privileged." Regardless of the fact that you may find this to be "ambiguous and contradictory", either the documents exist or they are privileged. In both situations, they do not have to be produced. Regarding the trademark search, the results of said search were verbally reported to client, therefore there is no written opinion of registerability and the contents of said search are attorney/client work product and privileged.

As for the requested privilege log:

Privilege log:

1) Results of trademark search

Document Request No. 8

Your alleged deficiency: Please confirm that there are no responsive documents that identify, explain, or describe any goods or services Mr. Wilcox intends to offer under RITZ.

Applicant's good-faith response: The answer provided to Document Request No. 8 was full and complete. Your alleged deficiency requests more information from Mr. Wilcox. The request called for "Representative samples of all documents or other materials which identify, explain or describe each of the products or services ever offered or sold, *or* intended to be offered or sold, under Applicant's Mark..." As previously noted, Applicant has not used RITZ in connection with any products or services to date. Thus, there have been no products or services offered or sold under Applicant's Mark. Should Ritz-Carlton wish to issue a second set of requests to Mr. Wilcox, it may do so as permitted by the rules and procedures set forth in the TBMP.

Should you have any questions or concerns, please do not hesitate to contact me in writing.

Sincerely,

A handwritten signature in cursive script, appearing to read "Richard D. Clarke".

Richard D. Clarke

Attorney at Law

Registered U.S. Patent and Trademark Office

RDC/rf
Enclosures

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Arent Fox
ATTORNEYS AT LAW

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

March 4, 2005

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

This is in reply to your letter of March 2, 2005 that responds to our client's deficiency letter. We are writing to make an additional good faith effort to resolve Mr. Wilcox's discovery deficiencies informally.

As an initial matter, we have not heard back from you on whether the March 14 deposition date, as set out in the Notices of Deposition, is convenient for your client and Mrs. Wilcox. As you have not advised us whether this date is convenient or proposed another date (which we are happy to discuss with you), we plan to move forward with the depositions on March 14. As such, your client needs to amend his discovery responses and produce responsive documents by no later than March 10 in advance of the depositions. Otherwise, our client intends to file a motion to compel.

Moving on to the substance of your letter, we do not understand your continuing assertion that Mr. Wilcox is not required to sign and verify under oath his answers to Ritz-Carlton's interrogatories. As the party to the opposition and an individual, Mr. Wilcox is the proper party to sign the interrogatory answers. Further, under Fed. R. Civ. P. 33(b)(1), answers to interrogatories must be made under oath. Even if you were permitted to sign on Mr. Wilcox's behalf, you have not verified the answers under oath. In the event you were to verify the answers under oath, our client would want to take your deposition.

You also assert incorrectly that Ritz-Carlton's answer to Mr. Wilcox's interrogatories is similarly deficient on the grounds that our client did not sign its answer. As TBMP §405.04(c) states, and as quoted in your letter, "objections to interrogatories must be signed by the attorney making them." Our client's interrogatory answer contained a general objection on the grounds of excessive number, and we properly signed as to the objection.

Interrogatory No. 3: While we appreciate your efforts to respond more fully, the response remains inadequate and incomplete. A cursory review of the interrogatory reveals the

TECH/288721.1

March 4, 2005
Richard D. Clarke, Esq.
Page 2

information lacking in your client's answer. Your response states only that Mr. Wilcox and his spouse selected the mark, then you refer to Mr. Wilcox's application. The interrogatory requests far more information than that. Please advise whether your client will supplement his answer to provide all requested information.

Interrogatory No. 7: Your response still does not identify who printed or made the items on which RITZ has been displayed. Please advise whether your client will supplement his answer to provide this information.

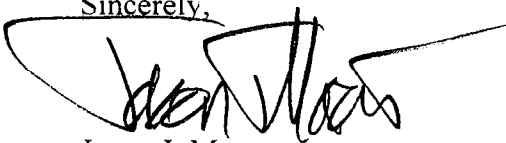
Interrogatories Nos. 12 and 14, and Document Request No. 8: Your client's attempt to avoid answering these discovery requests by simply stating that he is not yet using RITZ is improper. The requests contemplate both existing and intended future use. Please advise whether your client will supplement his answers to provide this information, and please confirm that he will provide responsive documents.

Interrogatory No. 28: Your response is evasive. Please advise whether your client will amend his answer to provide the information requested, including "all action taken [by your client] in response to the objection." Your suggestion that we simply "review our file" to get information is in bad faith, as your client is required to answer the interrogatory in full, and because our files cannot possibly provide information on all action your client has taken.

Document Request Nos. 2, 4, 5, 34: As we advised in our previous letter, the results of a trademark search are not covered by privilege. You state that you verbally communicated to Mr. Wilcox the results of the search. However, merely communicating the search results to your client does not entitle your client to claim privilege as to the results themselves. Please advise whether Mr. Wilcox will produce the search results voluntarily.

We thank you for your prompt attention to these matters and look forward to receiving your client's supplemented discovery answers and responsive documents by no later than March 10, 2005.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason J. Mazur", with a large, sweeping flourish extending to the right.

Jason J. Mazur

cc: Michael A. Grow

6

Arent Fox
ATTORNEYS AT LAW

Jason J. Mazur

Associate
202/715-8409 DIRECT
mazurj@arentfox.com

March 10, 2005

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941


RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

We have received no reply from you to our letter dated March 4, 2005, nor have we received any amended discovery responses or responsive documents. Moreover, it appears that you gave us an incorrect address for the Wilcoxes. Accordingly, we have no choice but to postpone until a later date the depositions of Robert and Elena Wilcox that were scheduled for March 14, 2005. Please advise your client and Mrs. Wilcox that **we will not proceed** with the depositions on March 14.

Please provide us with alternate dates for the depositions and let us know when we can expect to receive your client's amended discovery responses and responsive documents. In addition, please provide correct addresses and advise whether Elena Wilcox will appear voluntarily, or whether we will need to serve a subpoena.

Sincerely,



Jason J. Mazur

cc: Michael A. Grow
Douglas R. Bush

TECH/290155.1

7

Richard D. Clarke
INTELLECTUAL PROPERTY ATTORNEY
3755 Avocado Blvd., #1000
La Mesa, CA 91941-7301
Telephone 619-670-1702 Facsimile 619-670-7585

March 10, 2005

VIA FACSIMILE ONLY

202-857-6395

Jason Mazur, Esq.
Arent Fox, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

RE: Ritz-Carlton v. Robert Wilcox (Opposition No.91161969)

Dear Mr. Mazur:

This letter is in response to your letter dated March 10, 2005, that indicates you have chosen to postpone the depositions of Robert and Elena Wilcox. I will meet with my client this weekend and discuss possible reschedule dates. We will get back to you with several options.

The address you have on Fay Avenue in La Jolla is the proper business address for Mr. and Ms. Wilcox. When you attempted to serve the subpoena, which was entirely uncalled for as Ms. Wilcox will gladly and voluntarily be deposed and was prepared to so on March 14, 2005, no one was at the office who could have accepted same. Why don't you try First Class mail.

As for our responses to your so called deficiencies, we will gladly answer after we have received your answers to our revised set of interrogatories, including relevant documents related to your answers. Your time limit for responding was unreasonable, and because I was out of town until March 9th, I did not receive your letter until today, March 10th. Furthermore, Mr. Wilcox travels frequently, and he was not here this week to assist me in producing answers.

Finally, could you provide me with the names of the top executives at each Ritz-Carlton Hotel and subsidiary in the United States. We would like to notice depositions in the short time left for discovery. Thank you in advance for your reply.

Should you have any questions or concerns, please do not hesitate to contact me in writing.

Sincerely,



Richard D. Clarke
Attorney at Law
Registered U.S. Patent and Trademark Office

RDC/pk

04-RIT/901/Mazur5.ltr

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Arent Fox
ATTORNEYS AT LAW

March 17, 2005

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

We are writing in response to your letter of March 10, 2005. Thank you for agreeing to voluntarily produce Mrs. Wilcox for deposition. As you know, we have already served notices of deposition on both Mrs. Wilcox and your client; please provide us with convenient reschedule dates.

With regard to your client's discovery deficiencies, please let us know when we can expect your response to our letter dated March 4, 2005. As indicated in our March 10 letter, your client's Second Set of Interrogatories exceeds the limit established in the Trademark Rules of Practice. We have already served our client's objection to these interrogatories. Your client has not yet served a set of interrogatories that complies with the relevant rules. If and when your client does so, our client will be happy to provide answers. However, we are not willing to wait for Mr. Wilcox to serve proper interrogatories before resolving the discovery deficiencies. If your client's position is that he will not do so until he obtains our client's answers to any proper set of interrogatories Mr. Wilcox may serve, we will have no choice but to file a motion to compel.

In response to your request that we identify individuals at Ritz-Carlton for depositions, we will be in a position in the next few days to identify the person most knowledgeable about the relevant matters at issue in this proceeding. As you know, our client operates numerous hotels in the United States. If there is any particular hotel you are interested in, please let us know. Now that the TTAB has granted the consented request for extension of discovery deadlines, which we filed with the TTAB and served on you February 18, 2005, there is more leeway as far as scheduling depositions.

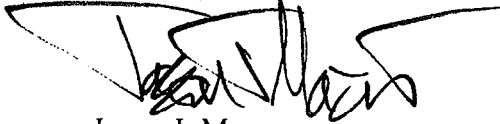
We are continuing to confer with our client concerning the matters raised in your letter of March 2 concerning alleged deficiencies in our client's discovery responses. We expect to send

TECH/291400.1

March 17, 2005
Richard D. Clarke, Esq.
Page 2

you a response by next week regarding these alleged deficiencies and the proposed protective order, as well as send to you additional responsive documents.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason J. Mazur", with a large, sweeping flourish extending to the right.

Jason J. Mazur

cc: Michael A. Grow
Douglas R. Bush

9

Richard D. Clarke
INTELLECTUAL PROPERTY ATTORNEY
3755 Avocado Blvd., #1000
La Mesa, CA 91941-7301
Telephone 619-670-1702 Facsimile 619-670-7585

March 24, 2005

VIA FACSIMILE ONLY

202-857-6395

Mr. Jason Mazur, Esq.
Arent Fox, PLLC
1050 Connecticut Avenue, NW
Washington, DC 20036-5339

RE: Ritz-Carlton v. Robert Wilcox (Opposition No.91161969)

Dear Mr. Mazur:

This letter is in response to your letter dated March 4, 2005 in which your client again alleged deficiencies in my client's discovery responses. This letter serves to make an additional good-faith attempt to resolve your client's concerns. Although some of these responses contain information not specifically and clearly asked for in Opposer's discovery, instead of objecting to and making Opposer issue new discovery, Applicant, in good-faith, provides the following responses:

Interrogatory No. 3

Your client's alleged deficiency: While we appreciate your efforts to response more fully, the response remains inadequate and incomplete. A cursory review of the interrogatory reveals the information lacking in your client's answer. Your response states only that Mr. Wilcox and his spouse selected the mark, then you refer to Mr. Wilcox's application. The interrogatory requests far more information than that.

Applicant's good-faith response: There are no facts relating to the acquisition as Applicant has not yet obtained the mark. The facts relating to selection: Mr. Wilcox looked up the word "ritz" and "ritzzy" in his dictionary (the Microsoft Encarta College Dictionary) and found the definitions of those words. After discussing the matter with his spouse, they selected the mark ritz over the mark ritzy (as being more understated and less glitzy). The dictionary definitions were as follows: ritz - an extravagant or ostentatious show or display of something (informal); putting on the ritz - to make a show of wealth and extravagance. ritzy - expensively stylish and elegant (informal), also ritzily and ritziness. Fact regarding availability, Richard Clarke performed a preliminary trademark search for pending and registered federal marks which might conflict. There were none found. Mr. Clarke then verbally reported the results of said search by telephone. No printouts of the search results were made. The search was performed on-line and reported immediately while the results were displayed on a computer screen. Facts relating to decision to use only involve the conversations and discussions between husband and wife leading to the making of a decision. The facts related to intent to use involve the producing of the business cards, letterhead and web pages seen at www.ritzgalleries.com. The facts relating to attempt to register include the filing of the application (Exhibit 3), and the USPTO approving

the mark for publication upon initial examination.

Interrogatory No. 7

Your client's alleged deficiency: Your response still does not identify who printed or made the items on which RITZ has been displayed.

Applicant's good-faith response: Applicant has not used the "RITZ" mark in connection with any product or service to date. Applicant has a business card and letterhead design containing a composite "RITZSPECTRUM" mark. Applicant and his wife were involved in creating and producing the business cards and letterhead. If, at a later date, Applicant uses the "RITZ" mark on business cards and letterhead, Applicant and his wife will be involved in creating and producing any such business cards and letterhead. Therefore, Mr. and Ms. Wilcox designed and printed the business cards and letterhead without outside help. Likewise, Mr. Wilcox produced and uploaded the web pages without outside help.

Interrogatory No. 12

Your client's alleged deficiency: Your client's attempt to avoid answering these discovery requests by simply stating that he is not yet using RITZ is improper. This request contemplates both existing and intended future use.

Applicant's good-faith response: At the time of filing Applicant intended to use the "RITZSPECTRUM" mark on letterhead, business cards, and web pages. After the mark was approved for publication by the USPTO, Applicant began looking into the possibility of opening an on-line gallery, with fine art for sale therein.

Interrogatory No. 14

Your client's alleged deficiency: Your client's attempt to avoid answering these discovery requests by simply stating that he is not yet using RITZ is improper. This request contemplates both existing and intended future use.

Applicant's good-faith response: If, in the future, applicant uses the mark "RITZ" in connection with any products or services, the type of prospective customers who may use or purchase any of those products or services are those customers who are involved with or interested in fine arts and related goods and services. Because it is impossible to determine who these persons are in advance, a more detailed answer would merely be speculative. In speculation, we are assuming that the target consumer would be a person interested in acquiring fine art (originals, not reproductions) in the price range of \$4,000 to \$4,000,000 per piece.

Interrogatory No. 28

Your previously alleged deficiency: The answer to this interrogatory is incomplete. Again, merely because Ritz-Carlton may have knowledge of its objections does not excuse Mr. Wilcox's obligation to answer this interrogatory. Further, the answer fails to state what action was taken in response to the objection.

Applicant's good-faith response: Any and all objections received by Mr. Wilcox came to him through his trademark attorney Richard Clarke. All such objections and all such communications were received by fax and mail, and all originated at Arent Fox PLLC. The identity of the sender was in each case Jason Mazur, Esq. Who is employed as an associate at Arent Fox. The dates vary, but range from October 2004 to the present. In each case the action taken was to have Mr. Wilcox attorney reply by fax and/or mail.

Document Request Nos. 2, 4, 5, 34

Your alleged deficiencies: As we advised in our previous letter, the results of a trademark search are not covered by privilege.

Applicant's good-faith response: If, as you assert, the results of a trademark search are not covered by attorney-client privilege, we firmly believe that the results in this case are still protected by attorney-client work product immunity. In this case there exists no paper hard copy search results. Nonetheless, the explanation is as follows: the search was performed on-line and while the results were on counsel's computer screen, simultaneously verbally communicated to the client via telephone. The telephone conference was not memorialized in writing nor was it recorded in any way. The search revealed no conflicting marks save the RITZ CAMERA mark which has both retail "brick and mortar" stores and a large on-line retail operation. However, upon analysis it was concluded that the target audience and the goods intended to be sold were sufficiently different so as to allow both marks to co-exist in the marketplace without a likelihood of confusion. Apparently, the Trademark Office examiner fully agreed with our conclusion, and published the mark for opposition without an Office Action being sent.

As for Request No. 2: No such documents exist. That is, there is not one piece of paper or any electronic document which currently evidences Applicant's first learning of Opposer's registered and pending marks. Applicant first learned of Opposer's registered and pending marks in a telephone call from counsel. Applicant first learned of the RITZ-CARLTON mark in connection with hotel services years ago as seen in print ads, signs and promotional materials.

As for Request No. 4: All such documents have been previously provided in Exhibits 1 through 6. No other documents, either in electronic or hard paper copy form exist, or they would have been duly provided.

As for Request No. 5: No such document now or ever did exist. The search and evaluation was conducted verbally. No paper printouts were produced and no record of the telephone conference was made or recorded. The search was performed on-line and simultaneously verbally reported to client without a record of any kind.

As for Request No. 34: No third party has ever objected to Applicant's use of the mark. Only Opposer, through its counsel, have sent any form of an objection. There were two or three letters sent before receiving the Notice of Opposition, also sent by Opposer's counsel, and numerous correspondences sent in connection with said Opposition, again all were from Opposer's counsel. I repeat, Opposer has full knowledge of all Opposer sent objections. Each and every letter would be present in Opposer's counsel's files. Unless the file has been lost or destroyed Opposer's counsel can easily find each and every document that would be sent in response to this request. Since Opposer is the only objector to Applicant's use and registration of the mark at issue, and there are no other third parties involved, it is unreasonable to request that

Applicant copy and mail all of the exact same correspondence that Opposer's counsel has sent, and in the normal course of business, is assumed to have copied, sorted, filed and stored in a safe place.

Document Request No. 8

Your alleged deficiency: This request contemplates both existing and intended future use.

Applicant's good-faith response: As Mr. Wilcox has not yet identified each of the products intended to be offered or sold under the "RITZSPECTRUM" Galleries mark, thus, there are currently no documents to this effect, save the recitation of services as filed in the trademark application. Presently, Mr. Wilcox intends to sell fine art through on-line web based galleries. If this venture is successful, Mr. Wilcox may consider other modes of retailing fine art to the public, but to this date, he has not.

I hope this adds clarity to the previous responses. We have done our best to provide you with everything we have. We now consider these questions and requests "asked and answered." Any Motion to Compel will create undue delay and will be a waste of the TTAB court's time.

To date, Applicant has still not received Opposer's responses to Applicant's deficiency letter dated March 2, 2005. As Applicant has now made a second good-faith attempt to address Opposer's concerns, Applicant would appreciate a similar effort by Opposer. In the event Applicant does not receive Opposer's responses to Applicant's deficiency letter within a reasonable period from the date of this letter, Applicant will be forced to pursue all available remedies.

Should you have any questions or concerns, please do not hesitate to contact me in writing.

Sincerely,



Richard D. Clarke

Attorney at Law

Registered U.S. Patent and Trademark Office

RDC/pk



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

THE RITZ CARLTON HOTEL COMPANY,
LLC,

Opposer,

vs.

ROBERT B. WILCOX,

Applicant.

OPPOSITION NO.
91161969

DEPOSITION OF ROBERT B. WILCOX

San Diego, California
Friday, May 13, 2005
9:45 a.m.

REPORTED BY: Margaret M. Barrack, CSR No. 6465

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1 saw that?

2 A. I don't recall.

3 Q. If you look at the second to the last
4 paragraph on that first page, it says, "Accordingly, we
5 request that your client discontinue its plans to use the
6 register Ritz."

7 I gather because we're here today you
8 have not discontinued your plan to use Ritz; is that true?

9 A. That's exactly true.

10 Q. So you still intend to use it --

11 A. Absolutely.

12 Q. -- at some point.

13 A. I would have withdrawn the application
14 if -- I mean that was logical.

15 MR. GROW: Okay. Let's mark this as the next
16 exhibit.

17 (4-page document marked for
18 identification as Exhibit 11: Attached hereto and made a
19 part of this record.)

20 Q. (BY MR. GROW, continuing) Let me show
21 you what has been marked Exhibit 11.

22 Can you tell me whether you've seen
23 that before?

24 MR. CLARKE: Do you recall seeing it?

25 THE WITNESS: I don't recall seeing it.

1 Q. (BY MR. GROW, continuing) Okay.

2 This is a letter dated March 24, 2005 from your attorney
3 to Jason Mazur, who is one of my colleagues. And it
4 relates to responses to interrogatory answers.

5 If you look at Page 3 of that letter,
6 there is a reference there to -- under the heading
7 "Document Request," Numbers 2, 4, 5, and 34, relating to a
8 trademark search. That was done before you filed your
9 trademark application. Do you see that?

10 A. Uh-huh.

11 Q. And it says, I guess in the third
12 sentence or second sentence, "Nonetheless, the explanation
13 is as follows: the search was performed online and while
14 the results were on counsel's computer screen,
15 simultaneously verbally communicated to the client via
16 telephone."

17 Do you remember what's described there,
18 a search being done and results being communicated by
19 telephone?

20 A. Yes.

21 Q. And it says, "The search revealed no
22 conflicting marks save the Ritz Camera mark, which has
23 both retail brick and motor stores and large online retail
24 operations."

25 Do you remember the Ritz Camera mark

11

Arent Fox
ATTORNEYS AT LAW

April 6, 2005

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

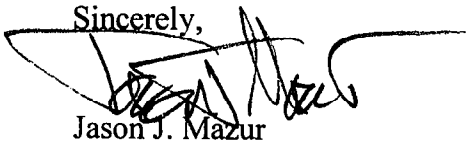
Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

I am writing in response to your letter dated March 24, 2005. We appreciate your client's efforts to comply with his discovery obligations. To that end, please have your client provide any additional information he intends to offer in the form of sworn supplemental answers to Ritz-Carlton's First Set of Interrogatories. Because Mr. Wilcox has not yet signed and verified any of his interrogatory answers under oath, as required, please have Mr. Wilcox provide a sworn copy of his original answers to the First Set of Interrogatories.

Sincerely,



Jason J. Mazur

cc: Michael A. Grow

TECH/294587.1

12

Arent Fox
ATTORNEYS AT LAW

May 20, 2005

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

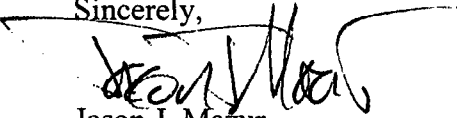
Dear Mr. Clarke:

Enclosed is a replacement signature page to Ritz-Carlton's Answers to Applicant's Third Set of Interrogatories, which has been signed by our client and verified under oath.

During Mr. Wilcox's deposition last Friday, your client admitted that he had not seen your March 24, 2005 letter in response to our second deficiency letter. In your March 24 letter, you purported to provide "Applicant's good faith responses" to our client's First Set of Interrogatories. Ritz-Carlton is entitled to receive complete interrogatory answers signed under oath by the party to the proceeding, not answers from his attorney in a letter, particularly where your client was unaware of the contents or existence of the letter.

Accordingly, and as requested in our April 6, 2005 letter, please have your client provide any additional information he intends to offer in the form of sworn supplemental answers to Ritz-Carlton's First Set of Interrogatories. Because Mr. Wilcox has not yet signed and verified any of his interrogatory answers under oath, please have Mr. Wilcox provide a sworn copy of his original answers to Ritz-Carlton's First Set of Interrogatories.

Sincerely,



Jason J. Mazur

Enclosure

cc: Michael A. Grow

TECH/301633.1

ANSWER: The undersigned provided the answers with assistance from Opposer's outside counsel.

THE RITZ-CARLTON HOTEL COMPANY, L.L.C.

By

Derek Flint

Printed Name

DEREK FLINT

Title

SENIOR CORPORATE DIRECTOR OF ROOMS

State of MARYLAND

County of MONTGOMERY

ss: 573-81-6097

Subscribed and sworn to before me, a notary public in and for said county and state this 11
day of MAY, 2005.

Susan Levenson
Notary Public

(Seal)



Objections made by:

Michael A. Grow

Michael A. Grow

Douglas R. Bush

Jason J. Mazur

Arent Fox PLLC

1050 Connecticut Avenue, NW

Washington, DC 20036

(202) 857-6000

Attorneys for Opposer

13

f

Arent Fox
ATTORNEYS AT LAW

August 9, 2005

**VIA FACSIMILE: 619-670-7585
AND FIRST-CLASS MAIL**

Jason J. Mazur
Associate
202/715-8409 DIRECT
mazurj@arentfox.com

Richard D. Clarke, Esq.
3755 Avocado Blvd. # 1000
La Mesa, CA 91941

RE: Ritz-Carlton v. Robert Wilcox (Opposition No. 91161969)

Dear Mr. Clarke:

We are writing once again in a good faith attempt to get your client to comply with his outstanding discovery obligations. (See our prior letters to you dated February 22, March 4, March 10, April 6, and May 20, 2005.) In view of the opening of our client's testimony period presently set for August 19, 2005, this presents an issue that must be resolved promptly. Otherwise, we will be forced to move to compel and move to extend the opening of the testimony period.

First, despite our repeated good faith efforts, Mr. Wilcox still has not provided any signed and verified answers to his interrogatories under oath, as required by TTAB rules and the Federal Rules. Additionally, Mr. Wilcox has not provided any sworn supplemental answers to Ritz-Carlton's interrogatories. We simply do not understand your client's reticence in these matters.

The only effort your client has made to supplement his answers was in your March 24, 2005 letter that purported to provide "Applicant's good faith responses" to our client's interrogatories – a letter that your client admitted he never saw. Our client cannot put into evidence during its testimony period a letter from an attorney. Our client can, and is entitled to, put into evidence complete interrogatory answers sworn by Mr. Wilcox.

Let us know as soon as possible, but by no later than August 15, 2005, if your client will voluntarily comply with his outstanding obligations so our client can decide whether to file a motion to compel and move to extend the opening of its testimony period.

Sincerely,


Jason J. Mazur

cc: Michael A. Grow

TECH/322803.1